

# **MINUTES OF THE CAPITAL PROJECTS AND BOND OVERSIGHT COMMITTEE**

**November 16, 1999**

The Capital Projects and Bond Oversight Committee met on Tuesday, November 16, 1999, at 1:00 PM, in Room 111 of the Capitol Annex. Representative Jodie Haydon, Chair, called the meeting to order, and the secretary called the roll.

Present were:

Members: Representative Jodie Haydon, Chairman; Senator Bob Leeper, Vice Chairman; Senators Tom Buford and Bob Jackson; and Representatives Robert Damron, Paul Marcotte, and Jim Wayne.

Guests testifying before the Committee: John Cubine, Jim Huggins, and Karen Timmel, Attorney General's Office; Commissioner Armond Russ and Jim Abbott, Department for Facilities Management; Bill Hintze, Governor's Office for Policy and Management; Leonard Gray and Jack Conway, Governor's Office; David Bratcher, Cabinet for Economic Development; and Tom Howard, Office of Financial Management.

LRC Staff: Mary Lynn Collins, Pat Ingram, Lou Pierce, Lola Williamson Lyle, and Shawn Bowen.

Representative Damron made a motion to approve the minutes of the October 19, 1999 meeting as submitted. The motion was seconded by Representative Marcotte and passed by voice vote.

Chairman Haydon reviewed correspondence items in members' folders, including the Kentucky Lottery Corporation's monthly financial status report for September 1999, and correspondence from Finance Secretary John McCarty certifying receipt of private funds for the Madisonville Community College Science/Technical Building project.

Chairman Haydon said the first item of new business was a discussion of Bill Request (BR) 96, an ACT relating to public administration. He then called upon Representative Robert Damron, primary sponsor of the bill, and staff from the Attorney General's Office: Mr. John Cubine, Director of the Division of Administrative Services; Ms. Karen Timmel, Assistant Attorney General, Special Prosecutions Division; and Mr. Jim Huggins, Director, Public Corruption Unit, to discuss the bill.

Mr. Cubine said in 1998 the Attorney General's Office was asked to look into problems involving the bid process for construction of the Kenton County courthouse and

parking garage project. He said during the course of the investigation, they discovered various problems with laws governing local procurement. They also discovered that the penalty for the misuse of confidential information applied only to public officials and not to those who knowingly solicit or benefit from the confidential information.

Mr. Cubine said as a result of these findings, staff from the Attorney General's Office met with Representative Damron to develop a legislative proposal designed to make changes to existing statutes which will help avoid similar problems in the future. Ms. Timmel further elaborated on the investigation and BR 96, which 1) expands the misuse of confidential information statute to penalize those who knowingly solicit and/or benefit from the use of confidential information; 2) requires local construction projects over \$1 million to comply with the model procurement code; 3) requires local public officials involved in procurement for construction services of projects in excess of \$1 million to document and report procurement-related contact with potential bidders; 4) requires bidders to identify all subcontractors and major suppliers in bid documents; 5) defines fraud and imposes felony penalties for those who commit fraud in the procurement process, including bidders; and 6) adds training provisions for local officials involved in the procurement process.

Mr. Huggins said if this proposed law had been in effect during the investigation of the Kenton County courthouse and parking garage project, it would have provided the necessary authority to proceed against the bidder who received confidential information from the public official. Because of the lack of an appropriate statute, the only person prosecuted in the Kenton County case was the public official who disclosed the confidential information.

Representative Damron said he has discussed BR 96 with county officials and found many liked the requirement of documenting procurement-related contact with bidders since it provides protection for local officials if they are later accused of inappropriate contact during the procurement process.

Ms. Tonia Sorrell-Neal, Director of Government Affairs, Associated Builders and Contractors of Kentuckiana, told the Committee that her organization supports the bill's provision to standardize the procurement process for large local government construction projects by requiring compliance with the model procurement code.

Representative Marcotte said he thought the proposal was a good one and would insulate public officials from later criticism. He said he believed if those provisions had been in place when Kenton County started its courthouse project, the problems that later developed could have been prevented.

Chairman Haydon next introduced Mr. Jim Abbott, Director, Division of Real Properties, to discuss three lease reports. Mr. Abbott first reported on one state lease renewal contract exceeding \$100,000 for the Department of Education (PR-3761) in

Franklin County. Mr. Abbott noted that advertisements were placed for 16,025 square feet of office space in Franklin County for the Department of Education. The lease was awarded to the existing landlord, Capital Complex East, at a rate increase of 18%. The annual cost of the lease will now be \$142,623 (the annual rate was \$120,784).

Senator Buford made a motion to approve the lease contract for the Department of Education. The motion was seconded by Representative Damron and passed by voice vote.

Next, Mr. Abbott reported three lease improvements for leased properties located in Franklin County: Revenue Cabinet (PR-3386); Registry of Election Finance/State Board of Elections (PR-3738); and the Cabinet for Families and Children, Department for Community Based Services (PR-3844).

Chairman Haydon noted it is the landlord or the property manager who submits all bids to the Division of Real Properties for property improvements in leased facilities. He questioned the practice of permitting the landlord or the property manager to not only solicit the bids but, also to bid on the improvement projects themselves. Mr. Abbott said in the case of the Revenue Cabinet lease, PR-3386, the Department was concerned that one person, the property manager and former owner, who is also being contracted with to make over \$19,000 in improvements to the building, was wearing “many hats” and noted this was an unusual case. However, he said his office had checked with both the property owner and the Division of Engineering and found the bid for the work was acceptable.

Chairman Haydon then asked if in the cases where the property owner or the manager is bidding on work, if three bids rather than two should be obtained. Mr. Abbott responded that under current market conditions and based on the scale of most improvement projects, it could be difficult to obtain three bids.

Chairman Haydon said no further action was required on the lease improvements.

Lastly, Mr. Abbott reported that there were 14 state leases with square footage modifications for July through September 1999.

Chairman Haydon then called on Mr. Bill Hintze, Deputy State Budget Director, Governor's Office for Policy and Management (GOPM), and Commissioner Armond Russ, Department for Facilities Management, to discuss five projects submitted by the Finance and Administration Cabinet.

Mr. Hintze introduced Mr. Leonard Gray, Director of the Office of Minority Affairs and Mr. Jack Conway, Deputy Secretary of the Governor's Cabinet. He then discussed a \$348,000 allocation from the Capital Construction and Equipment Purchase Contingency Account to partially fund a disparity study of minority purchasing by state government. The study will cost approximately \$696,000; \$348,000 will be paid from the

Contingency Account and \$348,000 will be paid by the Transportation Cabinet. The purpose of the study is to determine whether the state can legally establish a minority business enterprise program. According to the standards set out in a case affirmed by the Supreme Court in 1989, *City of Richmond v. Croson*, a state which wants to develop a minority enterprise program must first demonstrate a compelling state interest and document a pattern of past discrimination in the awarding of contracts.

Mr. Hintze noted that the request to use funds from the Contingency Account for such a study was unusual. He said the Contingency Account, per statute, can be used for three things: (1) to address cost overruns on authorized projects; (2) to provide matching funds for unbudgeted projects with 50% or more federal or private funding; and (3) for feasibility studies for future capital projects. He went on to say that the disparity study is, in part, an investment in a capital project, and that a decision to use the Contingency Account for the disparity study was within the discretion of the Secretary of the Finance and Administration Cabinet as provided by statute.

Mr. Gray said the Governor created the Minority Affairs Office and the Governor's Employment, Business Affairs, and Economic Development Council in May of 1999; at that time he was appointed to head the office as Special Assistant to the Governor. He said the purpose of the Office and Council is to assure equity in awarding state contracts to minorities and women.

Mr. Gray said the Minority Council recommended the disparity study. He said there is already in place a statute that permits minority set asides for state procurement, but the state has not been able to fully implement the statute without documentation of prior discrimination. He said the state issued a Request for Information regarding a disparity study. Next, a Request for Proposals was sent out; the five responding vendors were narrowed to three, and after negotiations, a contract for \$696,000 was awarded to Griffin & Strong, PSC, of Atlanta, Georgia. Mr. Conway provided further legal background on the need for a disparity study.

Representative Damron said he would probably vote to approve the contingency allocation, but he was concerned that something of this nature was being brought to the Committee so close to the upcoming legislative session. He asked why the Cabinet was not including funding for the disparity study in its budget request. Mr. Hintze responded that this study is one of the Governor's priorities, and if they were to wait to receive an appropriation from the General Assembly, they would not be able to begin the study until April.

Representative Damron asked if the study would take into account various factors on which contract awards are based, such as the low bid. Mr. Conway said that Griffin & Stanley will do numerous interviews, review various records, and will identify those factors that resulted in bid award. They will develop a differential index that will try to

determine, all other factors including price, being equal, whether race or gender affected the contract awards.

Senator Buford noted the majority of the members of the Governor's Employment, Business Affairs, and Economic Development Council live in Lexington and Louisville. He suggested that in the future, the Governor might consider appointing members to the Council that live in other areas of the state. Mr. Gray said he would certainly keep that recommendation in mind for future appointments to the Council.

Senator Leeper asked if the study will address geographical discrimination. Both he and Senator Jackson said they have companies in their districts that feel the state does not want to do business with them because they are located so far away from Central Kentucky. Mr. Conway said the study would be limited to review of possible minority and gender discrimination.

Senator Jackson made a motion to approve the use of contingency funds for the disparity study. The motion was seconded by Representative Wayne and passed by voice vote.

Mr. Hintze next discussed an allocation of \$475,000 from the Emergency Repair, Maintenance and Replacement Account to replace two electric boilers at the Kentucky State Penitentiary in Lyon County with natural gas boilers. The prison's two electric boilers are inoperable and the prison is running on a rented temporary boiler.

Commissioner Armond Russ told the Committee that his office had inspected the boilers at the penitentiary, and had concluded that they need to be replaced immediately, especially with the approaching winter. Since it is an emergency project, Chairman Haydon said no further action by the Committee was required.

Mr. Hintze then reported plans by Kentucky State University to combine a portion of its funds authorized for the Student Housing Fire Safety Plan (\$446,300), with the McCullin Hall Renovation project (\$1,642,000), for a combined project scope of \$2,088,300.

Representative Wayne noted that last year the Committee had reviewed a funding proposal to implement a Student Housing Fire Safety Plan, developed by the university presidents and the President of the Council on Postsecondary Education. He requested a status report on the plan at a future Committee meeting. Mr. Hintze agreed to arrange for an update on how the fire safety plan is being implemented. Mr. Sherron Jackson, Senior Associate, EEO & Facilities, Council on Postsecondary Education, responded that a report is already being prepared and once it is ready, it will be shared with the Committee and the Finance and Administration Cabinet.

In response to a question from Representative Wayne, Mr. Jackson said the fire marshal has been involved in the development and implementation of the fire safety plan.

Lastly, Mr. Hintze reported on two allocations from the Statewide Deferred Maintenance Pool: \$399,000 to partially replace failing heating, ventilation, and air conditioning equipment at the Carl D. Perkins Rehabilitation Center in Thelma, Kentucky, and \$390,000 to make security and access improvements at the Cabinet for Human Resources building in Frankfort.

Chairman Haydon said no further Committee action was required for allocations from the Statewide Deferred Maintenance Account.

Chairman Haydon then introduced Mr. David Bratcher, Cabinet for Economic Development, to discuss three economic development bond (EDB) grants. Mr. Bratcher first reported on a proposed EDB grant for Webasto Sunroofs, Inc., in Lexington, Ky. The Cabinet is proposing to provide \$300,000 to Lexington Industrial Foundation/Lexington-Fayette Urban County Government to assist in funding the construction of a 101,000 square foot building on 15 acres near Georgetown Road and I-75 in Fayette County. The total cost of the project is \$15,019,000.

Representative Damron made a motion to approve the EDB grant for Webasto Sunroofs, Inc. The motion was seconded by Representative Wayne and passed by voice vote.

Mr. Bratcher next reported on a proposed EDB grant to benefit Clayton Mobile Homes (CMH) Manufacturing in Hodgenville, Ky. The Cabinet is proposing to provide a grant of \$30,000 to the Larue County Industrial Foundation to assist in funding a \$6,384,000 project to construct a 100,000 square foot production facility in the Larue County Industrial Park.

Senator Jackson made a motion to approve the EDB grant for CMH Manufacturing. The motion was seconded by Representative Wayne and passed by voice vote.

Lastly, Mr. Bratcher reported on an EDB grant for Family Dollar Services, in Morehead, Ky. The Cabinet is proposing to award Rowan County a grant of \$400,000 to assist in funding a \$78,435,000 project to construct a 907,000 square foot distribution center in the Morgan, Menifee, Rowan, and Carter (MMRC) Regional Industrial Park in Rowan County.

Senator Jackson made a motion to approve the EDB grant for Family Dollar Services. The motion was seconded by Representative Damron and passed by voice vote.

Senator Leeper noted Family Dollar Services reported investing \$78 million in the project; he asked if that report took into account any tax benefits the company will receive. Mr. Bratcher confirmed that the company had been approved to receive \$18.5 million in tax credits, but that amount was not deducted from the amount stated as the company's investment in the project. Senator Leeper commended the counties involved in the project for their cooperative effort.

Next, Mr. Tom Howard, Deputy Director, Office of Financial Management, presented three follow-up reports for previously approved bond issues: Kentucky Asset/Liability Commission (ALCo) Project Notes, 1999 Road Fund First Series (\$75,200,000); ALCo Project Notes, 1999 Road Fund Second Series (\$25,000,000); and Kentucky Housing Corporation Revenue Bonds, 1999 Series G, H, & I (\$90,000,000). Chairman Haydon said no action is required on these follow-up reports.

The final item Mr. Howard presented was two new School Facilities Construction Commission (SFCC) bond issues for Bowling Green Independent (Warren Co.) and Williamstown Independent (Grant Co.), neither of which required a tax increase.

Senator Jackson made a motion to approve the school bond issues with SFCC participation in debt service. The motion was seconded by Senator Leeper and passed by voice vote. Because of a possible conflict of interest, Representative Damron abstained from the vote.

Chairman Haydon said two locally funded school bond issues were submitted to the Committee for review this month: Paducah Independent (McCracken Co.) and Providence Independent (Webster Co.). He said no further action on these bond issues was required.

Chairman Haydon said also included in members' folders were two information items: a Capital Projects Update and a Department of Parks Capital Construction Report.

Chairman Haydon said the Committee's next meeting is scheduled for Tuesday, December 14, at 1:00 p.m. in Room 125 of the Annex. The meeting adjourned at 2:30 p.m.